IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6462 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMULLU TRIPANNA TENDAL

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

1. Special Civil Application No. 6462 of 1988

MR AVINASH K MANKAD for Petitioner No. 1-2
MR AJ DESAI Ld. AGP for Respondent No. 1
DELETED for Respondent No. 2
MR PRASHANT G DESAI for Respondent No. 3

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1. The petitioners have, by this writ petition under Article 226 of the Constitution of India, sought for following relief.

19(A)

Be pleased to quash the award (Mark :C) passed by the respondent No.1, setting aside all the proceedings under the Land Acquisition Act, so far as they are against these petitioners.

Or in the alternative, issue appropriate writ, order or direction to the respondent No.1, that may be deemed fit and proper in the circumstances of the case.

19(B)

In order that this petition may not be infructuous, this Hon'ble Court may be pleased to restrain the respondent No.1,2 and 3, his subordinates, servants and agents, from dis-possessing the petitioners from their hutments, till final disposal of this petition.

2. It is the say of the petitioners that they are the tenants in huts of one lady viz. Kashiben Ratanji since 1973. The petition has jointly been filed by one Shri Ramullu Tripanna Tendal and Kashinath Devram Hindayat. However, when the matter was taken up for final hearing it was informed by Mr. P.G.Desai, learned advocate for respondent no.3 - Surat Municipal Corporation, that petitioner no.1 - Ramullu Tripanna Tendal had died pending this petition. Hence, Mr.A.K. Mankad, learned advocate for the petitioners advanced various contentions on behalf of petitioner no.2.

3. Mr. Mankad submits that the petitioner was paying monthly rent of Rs.25/- to land lady Kashiben Ratanji, but said land lady mortgaged the land in question to one Parvatiben Dwarkadas and the petitioners were sought to be evicted by the said mortgagee Parvatiben Dwarkadas. As the petitioner resisted the attempts of eviction by the mortgagee, it is submitted that, the mortgagee viz. Parvatiben Dwarkadas got the proceedings for land acquisition initiated through respondent no.3 Surat Municipal Corporation in Novemebr,1987. That this action of respondent no.1 i.e.

Special Land Acquisition Officer is bad in law as the powers have been exercised by respondent no.1 under the Land Acquisition Act,1894 (the Act) not for any bona fide requirement viz. public purpose but at the instance of the mortgagee land lady through the Surat Municipal Corporation.

4. In the alternative, it was contended by Mr. Mankad that the petitioners were not aware of the Notification issued under Section 4 of the Act and respondent no.1 without issuing notice under Section 5 A of the Act proceeded to issue notice under Section 9, after more than 6 months from the date of initiation of the proceedings by publication of Notification under Section 4 of the Act. That no notice under Section 9 of the Act was ever served on the petitioner, and what was served was only a letter dated 3.6.1988. That in pursuance of such illegal act, without considering the objections raised by the petitioners, respondent no.1 passed award under Section 11 of the Act on 19.9.1988 which is at Mark-C.

5. It was further submitted that even if the stand of the respondents is accepted that the lands in question were required for a public purpose, the same could not be achieved by merely acquiring the lands on which the hutments of the petitioners stood in absence of surrounding lands being acquired. The Notification issued under Sections 4 and 6 of the Act are also sought to be challenged as having been issued in violation of the principles of natural justice.

6. As against this, it was submitted by Mr. P.G.Desai, learned advocate appearing on behalf of respondent no.3 - Surat Municipal Corporation that it was not open to the petitioners to approach this Court by way of present petition as no case is made out to show any illegality in the procedure followed by respondent no.1 while issuing the statutory notification under Sections 4 and 6 of the Act as well as necessary notice under Section 9 of the Act before making the award under Section 11 of the Act. For this purpose, Mr. Desai read extensively from the award under Section 11 of the Act dated 19.9.1988 and submitted that not only the petitioners were in know of the proceedings but had actively participated, and cannot be heard at this stage to complain that they were not aware of the proceedings. In relation to the contention raised on behalf of the petitioners that the notice under Section 9 of the Act was not issued and only a letter had been forwarded to the petitioners, it was submitted Mr. Desai that, even

if for the sake of argument, it could be said that notice under Section 9 of the Act was not in the required format, nonetheless the acquisition proceedings could not be held to be ab-initio void or illegal in any manner because, it was a settled legal position that defective notice under Section 9 of the Act would at the highest be only an irregularity and nothing more.

7. Mr. A.J.Desai, learned AGP appearing on behalf of respondent no.1 apart from reiterating what Mr.P.G.Desai, learned advocate for respondent no.3 had submitted, contended that Section 9 notice was only a procedural formality, which even if defective, could not vitiate the entire proceedings as contended on behalf of the petitioners.

8. On going through the award under Section 11 of the Act it is apparent that the proposal was received from the Collector, Surat to acquire the land in question for Surat Municipal Corporation for school and play ground for an existing school. Thereafter, Notification under Sections 4 and 6 were respectively issued on 12.11.1987 and 5.2.1988 without invoking the urgency clause. For the present, it is not necessary to set out in detail the dates of publication in various newspapers and the gazette as the said aspect is not in dispute. What was disputed was that the said notification had not been served on the petitioners individually. In support of the said submission, no such requirement in law has been pointed out.

9. The award further records that prescribed notice under Section 9(1) and (2) as well as Section 9(3) have been published and were duly served on the interested parties on or about 30.5.1988. Mr. Mankad joined the issue in relation to this part of the award and referred to Annexure-A viz. letter dated 3.6.1988 to state that the same only conveyed change of timings for the hearing of the objections and in fact, no notice as required under Section 9(3) of the Act had been served on the petitioners.

10. Sub-section 1 of Section 9 of the Act stipulates that a public notice be given at convenient places on or near the land to be acquired and that such notice should state that the Government intends to take possession of the land, and further that claim as regards the compensation for all interests in such land may be made to him.

Sub-section 2 of Section 9 of the Act further

stipulates that such notice as prescribed in Sub-section 1 shall state the particulars of the land so needed and mention the time and place wherein all persons interested in the land may appear personally or through a agent before the Collector. Upon such appearance by the interested persons, they are required to state the nature of the respective interest in the land and the amount and particulars of their claims to compensation in relation to such interest as well as the objections, if any, to the measurement made under Section 8 of the Act.

Sub-section 3 of Section 9 further stipulates that the Collector shall also serve notice as prescribed in Sub-sections 1 and 2 on all the occupiers of the land in question and thereafter, as required under Sub-section 2 such occupiers of the land or any other interested persons shall raised their objections.

11. In the present case, the communication dated 3.6.1988 specifically refers to fixation of hearing of claims and gives the particulars of the land to be acquired as well as the date and time when the hearing of the claim is to take place. The said communication is addressed to not only the land owner (mortgagee) Parvatiben Dwarkadas but, also to both the petitioners, who are admittedly the occupiers of the land.

12. The petitioners have responded to said communication by their reply dated 16.6.1988 wherein they have raised detailed objections and they have also prayed in the alternative that sufficient site as alternative accommodation in nearby vicinity may be allotted to them. The entire reply dated 16.6.1988 has duly been considered and thereafter award was made under Section 11 of the Act. Therefore, factually not only were the petitioners aware about the proceedings in question but, were also aware of the notice under Section 9 of the Act and had raised all the necessary objections by their communication dated 16.6.1988 which has duly been considered before making of the award under Section 11 of the Act. The contention regarding violation of principles of natural justice therefore fails.

13. As regards the legal contention raised by Mr. Mankad that there was no notice under Section 9 (3) of the Act served on the petitioners and only a communication dated 3.6.1988 was received by the petitioner informing about the change in timings of the hearing of the objections, the controversy is no longer res-intgera. In the case of Nasik Municipal Corporation Vs. Harbansal Laikwant Rajpal and Others, AIR 1997 SC

1701, a similar contention was raised before the Hon'ble Apex Court and it was contended that the award was therefore bad in law. The Hon'ble Apex Court repelling the said contention observed thus, "we find no force in the contention. In the absence of notice or failure to serve notice, the award does not become invalid."

14. Hence, both on facts as well as in law it is not possible to accept the submissions on behalf of the petitioners that the award under Section 11 of the Act is vitiated in law in absence of notice under Section 9(3) of the Act.

15. As regards the contention regarding mala fides on behalf of land lady Parvatiben Dwarkadas, at whose behest it is alleged that the proceedings for acquisition were initiated by respondent no.3, suffice it to say that though she was initially joined as respondent no.2 vide order dated 11.4.1991 passed by this Court she has been permitted to be deleted and hence, it is not necessary to deal with this contention. Furthermore, as already stated hereinbefore the Collector, Surat had forwarded the proposal for acquisition of the land in question as requested by respondent no.3 - Municipal Corporation by a proposal to the State Government under Section 78 of the Bombay Provincial Municipal Corporation Act,1949. Furthermore, as is evident from the site plan on record, the land under acquisition is an island surrounded by the land already owned, occupied and belonging to the school for whom the land in question is acquired. Therefore, there is no question of attributing any mala fide to either the officers of respondent no.3 Corporation or any other person as suggested in the petition.

16. In the result, petition is rejected. Rule discharged. There shall be no order as to costs.

(N.G.Nandi,J.)

(D.A.Mehta,J.)

(vipul)